

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,

v.

GERALD ANDREW DARBY,

Defendant.

CRIMINAL ACTION NO.
2:16cr36

TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

September 8, 2016

BEFORE: THE HONORABLE DOUGLAS E. MILLER
United States Magistrate Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE

By: Elizabeth Yusi
Leslie W. Fisher
Assistant United States Attorney
Counsel for the United States

FEDERAL PUBLIC DEFENDER'S OFFICE

By: Rodolfo Cejas
Assistant Federal Public Defender
Counsel for the Defendant

1 (Hearing commenced at 12:29 p.m.)

2 THE CLERK: United States of America versus Gerald
3 Andrew Darby, 2:16cr36.

4 Is the Government ready?

5 MS. YUSI: The Government is ready. Good morning,
6 Your Honor.

7 THE COURT: Good afternoon, Ms. Yusi. How are you?

8 MS. YUSI: Good afternoon, sorry. Judge Miller, I
9 want to introduce Leslie Fisher. She is with CS, the child
10 exploitation section at Main Justice, and she is also a SAUSA
11 that will be handling this hearing today.

12 THE COURT: All right. Nice to have you, Ms Fisher.

13 MS. FISHER: Thank you, Your Honor.

14 THE CLERK: Is the defendant ready, Mr. Cejas?

15 MR. CEJAS: Yes. Good afternoon, Your Honor.

16 THE COURT: Good afternoon, Mr. Cejas.

17 MR. CEJAS: Thank you for the Court's indulgence.

18 THE COURT: I understand. I had advanced warning
19 that we might get a late start. It's not problem at all.

20 MR. CEJAS: Thank you.

21 THE COURT: I understand Mr. Darby's reached an
22 agreement to plead guilty to count one of the pending
23 indictment; is that right?

24 MR. CEJAS: That's correct.

25 THE COURT: Have you had time to review everything

1 with him?

2 MR. CEJAS: I have, Your Honor.

3 THE COURT: And he's ready to go forward?

4 MR. CEJAS: Yes, sir, he is.

5 THE COURT: If you and Mr. Darby could come to the
6 podium, then.

7 I've reviewed all of the documents that were
8 transmitted, including the plea agreement and the statement
9 of facts that's been proposed, and it does appear that this
10 is not a conditional plea?

11 MR. CEJAS: Well, actually, it is.

12 MS. YUSI: It is a conditional plea.

13 THE COURT: It is a conditional plea?

14 MR. CEJAS: Yes, sir.

15 THE COURT: Where is it in the plea agreement? I
16 must have overlooked it.

17 MS. YUSI: Paragraph 6, Your Honor.

18 THE COURT: Okay. Let me look at this language
19 again.

20 Okay. Which motions is he reserving? There were
21 two motions to suppress and a motion to compel. Are all
22 three of the motions reserved?

23 MR. CEJAS: Yes, sir.

24 THE COURT: Okay. We might want to spell that out
25 specifically. Well, that's fine. We can do it on the

1 record. I'll do it on the record. Ms. Fisher.

2 MS. FISHER: Your Honor, Paragraph 3 explains which
3 motions, both motions to suppress and the motion to compel
4 are preserved.

5 THE COURT: Gotcha. Okay. All right. And you all
6 are all on board with that, right, Ms. Fisher?

7 MS. FISHER: Yes, Your Honor.

8 THE COURT: All right. Then let me ask Mr. Darby,
9 is your name Gerald Andrew Darby?

10 THE DEFENDANT: Yes, it is, Your Honor.

11 THE COURT: Mr. Darby, this case is assigned to
12 United States District Judge Robert Doumar. Judge Doumar
13 asked me to conduct the proceedings today, and I'm a United
14 States Magistrate Judge. You're entitled to insist that
15 Judge Doumar or another district judge conduct the
16 proceedings. Because he's asked me to conduct them, I have
17 to obtain your written consent. Do you understand this?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And did you review and sign this consent
20 to proceed before a magistrate judge?

21 THE DEFENDANT: Yes, I did, Your Honor.

22 THE COURT: Did Mr. Cejas explain it to you before
23 you signed it?

24 THE DEFENDANT: Yes, he did.

25 THE COURT: Mr. Cejas, did you also join in the

1 consent?

2 MR. CEJAS: Yes, sir.

3 THE COURT: And, Ms. Yusi, this appears to be your
4 signature. Did you consent to proceed before a magistrate
5 judge?

6 MS. YUSI: I did, Your Honor.

7 THE COURT: I will file the consent and go forward.

8 Mr. Darby, before accepting your plea the Court has
9 to inform you of your rights and make sure you understand
10 them and that you are guilty. In order to do that, in a
11 moment I'm going to ask the clerk to place you under oath,
12 and I'll ask you a series of questions. It's important that
13 you understand all of my questions. So if you don't
14 understand any of them, please stop me and ask me to rephrase
15 the question.

16 Will you agree to do this?

17 THE DEFENDANT: Yes, I will, Your Honor.

18 THE COURT: You may confer with Mr. Cejas at any
19 time, and I'm sure he's already prepared you for my
20 questions, but your answers today must be your answers based
21 on your understanding of the question. Do you understand
22 this?

23 THE DEFENDANT: Yes, I do, Your Honor.

24 THE COURT: Finally, if your answers later prove to
25 be false and material to the proceedings, those answers may

1 be used against you in a prosecution for perjury. Do you
2 understand this?

3 THE DEFENDANT: Yes, I do, Your Honor.

4 THE COURT: Ms. Dodge, would you please swear Mr.
5 Darby.

6 (Defendant was sworn.)

7 BY THE COURT:

8 Q. Is your correct name Gerald Andrew Darby?

9 A. Yes, it is.

10 Q. And are you the person named in the indictment bearing
11 criminal number 2:16cr36?

12 A. Yes, I am.

13 Q. How old are you?

14 A. I just turned 31, Your Honor.

15 Q. And how far did you go in school?

16 A. Attended high school and attended college for a few
17 years.

18 Q. Have you ever been treated for any mental illness or for
19 addiction to narcotic drugs?

20 A. A mental illness, Your Honor, severe depression.

21 Q. Are you still undergoing treatment?

22 A. No, I'm not, Your Honor.

23 Q. How long ago was your treatment?

24 A. I was taking the medication up until early May.

25 Q. Is there anything about that medication or your condition

1 that would affect your ability to understand and respond to
2 my questions today?

3 A. No, Your Honor.

4 Q. Are you taking any medication today or suffering from any
5 kind of illness that might affect your ability to understand
6 and respond to my questions?

7 A. No, Your Honor.

8 Q. Have you received a copy of the indictment pending
9 against you?

10 A. Yes, I have, Your Honor.

11 Q. Have you read the indictment and discussed the charges
12 with Mr. Cejas?

13 A. Yes, I have.

14 Q. You're charged in eight counts in the indictment, and
15 it's my understanding that you've agreed to plead guilty to
16 count one. Is that your understanding of the plea agreement?

17 A. Yes, it is, Your Honor.

18 Q. I'm going to explain the charge in count one as well as
19 the elements that the United States would have to prove in
20 order to convict you on this charge if the case went to
21 trial. Do you understand?

22 A. Yes, I do.

23 Q. Count one charges you with the receipt of images of
24 minors engaging in sexually explicit conduct. This is a
25 violation of Title 18 of the United States Code, Section

1 2252(a)(2). In order to convict you of the offense charged
2 in this count, the United States would have to prove each of
3 these elements beyond a reasonable doubt: First, that in the
4 Eastern District of Virginia you knowingly received a visual
5 depiction which had either moved in interstate commerce or
6 which had been produced using materials which moved in
7 interstate commerce; second, that the production of this
8 visual depiction involved the use of a minor engaged in
9 sexually explicit conduct, and that the depiction portrayed
10 the minor engaged in that conduct; and finally, that you knew
11 the visual depiction involved the use of a minor and
12 portrayed the minor in sexually explicit conduct.

13 Do you understand all the elements the United States
14 would have to prove to convict you on this count?

15 A. Yes, I do, Your Honor.

16 Q. The maximum penalty provided for a conviction on count
17 one is 20 years in prison, a \$250,000 fine, full restitution,
18 special assessments under Title 18 of the code, Section 3013
19 and 3014, and a minimum of five years up to a maximum of life
20 on supervised release.

21 In addition, a conviction on count one carries a
22 mandatory minimum term of imprisonment of five years. Do you
23 understand the punishment prescribed?

24 A. Yes, I do, Your Honor.

25 Q. This case involves restitution which is discussed in your

1 plea agreement at Paragraph 9. Do you understand that in
2 addition to any fine or prison sentence the Court imposes you
3 may be required to make restitution and compensate any victim
4 who has suffered a loss caused by any of the acts for which
5 you're pleading guilty?

6 A. Yes, I do, Your Honor.

7 Q. Any person who has suffered as a result of the acts for
8 which you're pleading guilty today may be the subject of a
9 restitution order, and that order would have the effect of a
10 judgment against you. Do you understand this?

11 A. Yes, I do.

12 Q. The exact amount of the restitution order has not yet
13 been determined, but it could be an amount equal to all of
14 the losses suffered by any victim of this offense. Do you
15 understand?

16 A. Yes, I do.

17 Q. This case also involves forfeiture which is addressed in
18 your plea agreement, Paragraph 17 through 18. Do you
19 understand that the Court may require you to forfeit or turn
20 over certain property to the Government if that property was
21 used to commit illegal activity or if it was obtained with
22 the proceeds of illegal activity?

23 A. Yes, I do, Your Honor.

24 Q. This offense is a felony. If your plea is accepted and
25 you're later found guilty, that judgment may deprive you of

1 valuable civil rights, including the right to vote, hold
2 public office, serve on a jury or possess a firearm. Do you
3 understand this?

4 A. Yes, I do.

5 Q. Also, under the Sex Offender Registration and
6 Notification Act, a federal law, you'll be required to
7 register and keep your registration current in each of the
8 following jurisdictions: where you reside, where you are
9 employed, or where you are a student. Do you understand
10 this?

11 A. Yes, I do, Your Honor.

12 Q. The requirements for registration include providing your
13 name, residence, address, as well as the name and address of
14 any place where you are employed or are a student. Do you
15 understand this?

16 A. Yes, I do, Your Honor.

17 Q. And you'll be required to keep your registration current
18 by informing any of these jurisdictions no later than three
19 business days after any change of your name, residence or
20 your employment or student status. Do you understand this?

21 A. Yes, I do, Your Honor.

22 Q. And finally do you understand that if you fail to comply
23 with the requirements to register and keep your registration
24 current, that may subject you to prosecution for failure to
25 register under federal law, which is a separate offense,

1 separately punishable by a fine or imprisonment?

2 A. Yes, I do, Your Honor.

3 Q. The cost of your prosecution and the cost of your
4 incarceration, supervision or probation may also be assessed
5 against you if the Court determines you have the funds to pay
6 those costs. Do you understand this?

7 A. Yes, I do.

8 Q. And you'll also be required to pay a special assessment,
9 and this special assessment is required whether or not you
10 have the ability to pay. Do you understand?

11 A. Yes, I do, Your Honor.

12 Q. Ordinarily the special assessment is \$100 for each count
13 of conviction. However, if the Court determines you have the
14 ability to pay, you may be required to pay an additional
15 special assessment of up to \$5,000 for each offense. Do you
16 understand this?

17 A. Yes, I do, Your Honor.

18 Q. In addition to any period of incarceration the Court
19 imposes, there may be a period of supervised release. The
20 period specified for a conviction on this count is a minimum
21 of five years up to a maximum of life. If you are placed on
22 supervised release and violate any of the conditions imposed
23 on you, that may subject you to an additional period of
24 incarceration. Do you understand this?

25 A. Yes, I do, Your Honor.

1 Q. I'm going to ask Mr. Dixon to hand you this document, Mr.
2 Darby. If you will please review it and tell me if you
3 recognize what it is. Do you recognize this document?

4 A. Yes, I do, Your Honor.

5 Q. Can you tell me what it is?

6 A. It's the plea agreement.

7 Q. Did you review this plea agreement with your attorney?

8 A. Yes, I did, Your Honor.

9 Q. Do you understand all of the provisions of the agreement?

10 A. Yes, I do, Your Honor.

11 Q. Do you have any questions for me about it at this time?

12 A. No, I do not, Your Honor.

13 Q. Did you initial each page of it and sign it at the back?

14 A. Yes, Your Honor.

15 THE COURT: Mr. Cejas, did you also review, initial
16 and sign the plea agreement?

17 MR. CEJAS: Yes, sir.

18 THE COURT: Ms. Fisher, did either you or Ms. Yusi
19 review, initial and sign on behalf of the United States?

20 MS. FISHER: Yes, Your Honor, Ms. Yusi did.

21 THE COURT: Mr. Darby, could you hand the document
22 back to Mr. Dixon.

23 Ms. Fisher, do you know whether any other plea
24 offers were extended to Mr. Darby in the case other than the
25 one that is contained in this written plea agreement?

1 MS. FISHER: No, Your Honor. This is the only plea
2 agreement.

3 THE COURT: Mr. Cejas, can you confirm this is the
4 only offer Mr. Darby received?

5 MR. CEJAS: That's correct.

6 BY THE COURT:

7 Q. Mr. Darby, do you understand that you have a right to
8 plead not guilty to these charges?

9 A. Yes, I do, Your Honor.

10 Q. And if you have already entered a not guilty plea, you
11 have a right to persist in that plea. Do you understand?

12 A. Yes, I do.

13 Q. If you plead not guilty, you would have the right to a
14 speedy and public trial by a jury. At that trial you'd have
15 the right to the assistance of an attorney, the right to
16 confront and cross-examine the witnesses against you, and you
17 cannot be required to incriminate yourself. Do you
18 understand these rights?

19 A. Yes, I do, Your Honor.

20 Q. And do you understand by pleading guilty you give up
21 these rights?

22 A. Yes, I do.

23 Q. If you plead not guilty and proceed to trial, you may not
24 be compelled to testify, and if you decide not to testify,
25 neither the Court nor the jury may draw any inference or

1 conclusion from your decision not to testify, and the
2 prosecutor may not comment on your decision in any way. Do
3 you understand these rights?

4 A. Yes, I do, Your Honor.

5 Q. And do you understand by pleading guilty you give up
6 these rights, as well?

7 A. Yes, I do.

8 Q. If the Court accepts your guilty plea, there will be no
9 further trial of any kind regarding your guilt or innocence
10 on these charges. Do you understand?

11 A. Yes, I do, Your Honor.

12 Q. If you were to plead not guilty, the United States would
13 have the burden of proof to prove you guilty beyond a
14 reasonable doubt. Do you understand this?

15 A. Yes, I do, Your Honor.

16 Q. In order to convict you, the Government would have to
17 convince every member of a 12-person jury of your guilt by
18 competent evidence. Do you understand the verdict would have
19 to be unanimous?

20 A. Yes, I do, Your Honor.

21 Q. At trial you would have the right to use the power of
22 this Court to compel the production of evidence, including
23 the attendance of witnesses on your behalf, but if the Court
24 accepts your guilty plea, you'll lose that right. Do you
25 understand this?

1 A. Yes, I do, Your Honor.

2 Q. If you continue in your desire to plead guilty, the Court
3 may ask you questions about the offense and about your
4 conduct which gave rise to these charges. Do you understand
5 this?

6 A. Yes, I do, Your Honor.

7 Q. And if you answer these questions under oath and your
8 answers later prove to be false and material to the
9 proceedings, those answers may be used against you in a
10 prosecution for perjury or false statement. Do you
11 understand this?

12 A. Yes, I do.

13 Q. Other than the matters which are preserved in your plea
14 agreement, do you feel that any of your constitutional rights
15 have been violated in any way in connection with the seizure
16 of any evidence in this case?

17 MR. CEJAS: No, Your Honor.

18 THE DEFENDANT: No, Your Honor.

19 BY THE COURT:

20 Q. I understand that you may have filed a motion to suppress
21 challenging the search of your computer, both remotely and as
22 a consequence of that remote search, the search that took
23 place in your resident, and those matters are preserved for
24 appeal in your plea agreement. Is that correct, Mr. Darby?

25 A. Yes, Your Honor.

1 Q. Other than those matters which were raised in the written
2 motions filed before the Court and addressed in your plea
3 agreement, are you aware of any other violation of your
4 constitutional rights in connection with the seizure of
5 evidence in the case?

6 A. No, Your Honor.

7 Q. Do you feel that any of your constitutional rights,
8 again, with the same reservation, were violated with regard
9 to the taking of any statement from you by law enforcement?

10 A. No, Your Honor.

11 Q. Has anyone, including your attorney or the United States
12 Attorney, made any promise of leniency or any promise of any
13 kind in return for your guilty plea other than what is
14 contained in this written plea agreement?

15 A. No, Your Honor.

16 Q. Has anyone threatened you in any way or tried to force
17 you to plead guilty?

18 A. No, Your Honor.

19 Q. Do you understand that if the prosecution agrees to
20 recommend a particular sentence in the case that that
21 recommendation will not be binding on Judge Doumar when you
22 are sentenced?

23 A. Yes, I do.

24 Q. Also, if the prosecution agrees not to oppose your
25 attorney's recommendation, even if both attorneys agree on an

1 appropriate sentence, the Court is not required to follow
2 their recommendation? Do you understand this?

3 A. Yes, I do, Your Honor.

4 Q. Have you had the opportunity to discuss your case with
5 Mr. Cejas?

6 A. Yes, I have.

7 Q. And have you discussed all of the facts of the case with
8 him?

9 A. Yes, I have.

10 Q. Are you satisfied that he's fully considered the facts
11 and discussed with you any possible defenses you may have to
12 these charges?

13 A. Yes, I am, Your Honor.

14 Q. Do you understand that if you are sentenced to prison for
15 this offense, there is no parole in the federal system?

16 A. Yes, sir, Your Honor.

17 Q. The statute under which you are charged sets forth both
18 the maximum and minimum sentence which can be imposed, but it
19 is also subject to the federal sentencing guidelines, and
20 these guidelines will be consulted by the Court to determine
21 the actual sentence imposed on you. Do you understand this?

22 A. Yes, I do.

23 Q. Are you aware that the sentence recommended by the
24 guidelines will be based in part on the actual conduct in
25 which you engaged?

1 A. Yes, I am, Your Honor.

2 Q. And this will include all of your relevant conduct, not
3 just the minimum conduct necessary to establish the elements
4 of this single count. Do you understand this?

5 A. Yes, I do, Your Honor.

6 Q. The guidelines also take into account the victim or
7 victims of your offense, the role that you played, whether or
8 not you engaged in any obstruction of justice or have
9 accepted responsibility for your acts. Do you understand
10 this?

11 A. Yes, I do, Your Honor.

12 Q. Do you understand that your criminal history is an
13 important factor in applying the sentencing guidelines?

14 A. Yes, I do.

15 Q. Although the guidelines are advisory the Court will give
16 greater consideration to the sentence that the guidelines
17 recommend. Do you understand this?

18 A. Yes, I do, Your Honor.

19 Q. After today's hearing but prior to sentencing, a
20 presentence report must be prepared by the probation office
21 setting forth your personal history as well as the facts of
22 this case. Do you understand this?

23 A. Yes, I do.

24 Q. Do you understand that until this presentence report is
25 completed, it is impossible for either the Court or for your

1 attorney to know precisely what sentence range will be
2 prescribed by the guidelines?

3 A. Yes, I do, Your Honor.

4 Q. The Court will follow the procedure set forth in the
5 guidelines when it determines your sentence and it can only
6 do that after receiving the presentence report. Do you
7 understand?

8 A. Yes, I do.

9 Q. Sometimes the Court has to resolve disputes that arise
10 about information contained in the presentence report and the
11 resolution of those disputes may affect how the guidelines
12 apply in your case. Do you understand this?

13 A. Yes, I do.

14 Q. Have you discussed the guidelines with Mr. Cejas?

15 A. Yes, I have, Your Honor.

16 Q. And has he explained the various considerations which
17 will go into determining how the guidelines apply in your
18 case?

19 A. Yes, he has.

20 Q. And do you understand at this point it's unlikely that
21 Mr. Cejas can be specific about the guideline range because
22 he has not seen the presentence report?

23 A. Yes, I understand, Your Honor.

24 Q. And do you understand that you will not be permitted to
25 withdraw your guilty plea on the grounds that your attorney's

1 prediction of the guideline range later proves to be
2 inaccurate?

3 A. Yes, I do.

4 Q. Now, under some circumstances you or the United States
5 may have the right to appeal any conviction or sentence that
6 the Court imposes, and in general you would have the right to
7 appeal your conviction and the sentence and to proceed
8 without paying a filing fee if you qualified for indigent
9 status.

10 However, in your plea agreement there's a written
11 provision which limits your right to appeal. It preserves
12 your right to appeal the adverse determination of three
13 pretrial motions; two motions to suppress and one motion to
14 compel. Do you understand that?

15 A. Yes, I do, Your Honor.

16 Q. Other than the issues raised by those three pretrial
17 motions, this plea agreement includes a provision whereby you
18 waive your right to appeal your conviction on any other
19 grounds. Do you understand this?

20 A. Yes, I do, Your Honor.

21 Q. It also waives your right to appeal the Court's sentence.
22 Do you understand this?

23 A. Yes, I do, Your Honor.

24 Q. Are you entering this plea agreement freely and
25 voluntarily?

1 A. Yes, I am.

2 THE COURT: All right. I'm going to file -- Judge
3 Doumar hasn't seen this plea agreement yet, has he?

4 MR. CEJAS: No, sir.

5 THE COURT: I'm going to file it for now because he
6 may want to -- anyway, I'm going to file it rather than
7 accept it at this point in time.

8 MR. CEJAS: Thank you, sir.

9 THE COURT: Mr. Cejas, has Mr. Darby been competent
10 and able to cooperate with you in the case?

11 MR. CEJAS: Yes, sir.

12 THE COURT: And have you discussed the facts of the
13 case in detail with him?

14 MR. CEJAS: I have.

15 THE COURT: Are you satisfied that there are no
16 meritorious defenses he might raise which in your opinion
17 would result in -- clarify. Are you satisfied there are no
18 meritorious defenses other than those preserved in the
19 appeal, the limited appeal provision of the plea agreement,
20 are you satisfied that there are no meritorious defenses he
21 might raise in the case?

22 MR. CEJAS: Yes, sir.

23 THE COURT: Are you satisfied that the defendant's
24 constitutional rights have been observed except as preserved
25 in the plea agreement?

1 MR. CEJAS: Yes, sir, Your Honor.

2 THE COURT: Are you satisfied that as the defendant
3 stands there, he is not under the influence of any drugs,
4 narcotics, marijuana or alcohol?

5 MR. CEJAS: Yes, Your Honor.

6 THE COURT: Do you know of any reason of any kind
7 which would prevent the defendant from pleading guilty
8 pursuant to this plea agreement?

9 MR. CEJAS: No, sir, Your Honor.

10 BY THE COURT:

11 Q. Mr. Darby, I'm going to read count one to you from the
12 indictment. After I've read it, I'm going to ask if you
13 understand it. If you don't understand it, please tell me
14 and I'll explain the charge until you do understand. After
15 I'm satisfied that you understand the charge in count one,
16 I'll ask for your plea. All right?

17 A. Yes, Your Honor.

18 Q. Count one charges that on or about October 27, 2014, in
19 Suffolk, in the Eastern District of Virginia and elsewhere,
20 defendant Gerald Andrew Darby did knowingly receive a visual
21 depiction using a means and facility of interstate and
22 foreign commerce, and that had been shipped and transported
23 in and affecting interstate and foreign commerce, and which
24 contained materials which had been so shipped and transported
25 by any means, including by computer, and the production of

1 such visual depiction involved the use of a minor engaging in
2 sexually explicit conduct, and such visual depiction was of
3 such conduct. That is, Gerald Andrew Darby received a visual
4 depiction bearing the file name

5 "[JaneDoe]+9year+00016.JPG.JPG" in violation of Title 18 of
6 the United States Code, Sections 2252(a)(2), 2256(1) and (2).

7 Now, Mr. Darby, having heard the charge in count one,
8 do you understand it?

9 A. Yes, I do, Your Honor.

10 Q. How do you plead to count one, guilty or not guilty?

11 A. Guilty, Your Honor.

12 Q. Are you entering this guilty plea freely and voluntarily?

13 A. Yes, I am, Your Honor.

14 Q. Are you pleading guilty because you are, in fact, guilty
15 of the offense charged in count one?

16 A. Yes, I am, Your Honor.

17 Q. Mr. Darby, I'm going to ask Mr. Dixon to hand you another
18 document. If you would please review this and tell me if you
19 recognize what it is?

20 A. Yes, Your Honor.

21 Q. Can you tell me what it is?

22 A. It's the statement of facts, Your Honor, that I made.

23 Q. And did you review this statement with your attorney?

24 A. Yes, I did, Your Honor.

25 Q. Do you understand everything contained in this statement?

1 A. Yes, I do, Your Honor.

2 Q. Do you have any questions for me about it at this time?

3 A. No, Your Honor.

4 Q. Did you initial each page of it and sign it at the back?

5 A. Yes, Your Honor.

6 THE COURT: Mr. Cejas, did you review, initial and
7 sign the statement?

8 MR. CEJAS: Yes, sir.

9 THE COURT: Ms. Fisher, on behalf of the United
10 States, did you or Ms. Yusi review, initial and sign the
11 statement?

12 MS. FISHER: Yes, Your Honor, Ms. Yusi did.

13 THE COURT: And, Ms. Fisher, can you confirm that
14 this statement of facts is identical to what was faxed to
15 chambers for review?

16 MS. FISHER: Yes, sir.

17 THE COURT: Mr. Darby, could you hand it back to
18 Mr. Dixon, please.

19 Thank you.

20 BY THE COURT:

21 Q. Mr. Darby, the reason we prepare a written statement of
22 facts is because the Court is not permitted to accept your
23 plea without first making a finding that it is supported by
24 facts, that is, that there are facts upon which you and the
25 United States agree that would be sufficient to support your

1 conviction if the case went to trial. Do you understand
2 this?

3 A. Yes, Your Honor.

4 Q. So having reviewed the statement and understanding its
5 purpose, do you agree with everything contained in the
6 statement of facts?

7 A. Yes, Your Honor.

8 Q. Is there anything in the statement that you disagree with
9 or take exception to?

10 A. No, Your Honor.

11 Q. If the case did proceed to trial, do you agree that the
12 United States could prove all of these facts beyond a
13 reasonable doubt?

14 A. Yes, Your Honor.

15 THE COURT: I'm going to accept the statement of
16 facts and ask that it be filed.

17 I apologize that I did not have a chance to
18 communicate about the conditional nature of the plea, but in
19 light of the conditional nature of the plea, I'm going to
20 write an R&R. I'm going to recommend acceptance, but I'm
21 going to leave it to Judge Doumar to evaluate that record for
22 himself in light of the extensive prehearing litigation
23 that's already occurred and his close familiarity with those
24 issues. So I'm going to write an R&R instead of doing an
25 order, but I will go ahead and enter the sentencing

1 procedures order.

2 I understand you all have agreed with Judge Doumar
3 on December 15th at 10:00 a.m. for sentencing.

4 MR. CEJAS: Yes, sir.

5 THE COURT: Did you already review the sentencing
6 procedures order with Mr. Darby, Mr. Cejas?

7 MR. CEJAS: Yes, and I provided him with a copy.

8 THE COURT: Mr. Darby, I am entering an order
9 setting the terms by which the Court -- excuse me, the
10 process the Court will follow in arriving at your sentence.
11 It describes the preparation of the presentence report as
12 well as your opportunity to object to that report. Judge
13 Doumar requires that your attorney be present at any
14 interview conducted by probation, and that's set forth in the
15 order. Both you and your attorney will have the opportunity
16 to speak and to present evidence at the sentencing hearing.
17 Do you understand?

18 THE DEFENDANT: Yes, I do, Your Honor.

19 THE COURT: All right. I have entered the
20 sentencing procedures order, and I will prepare and file
21 today an R&R regarding acceptance of the plea.

22 Is there anything else we need to accomplish today,
23 Mr. Cejas?

24 MR. CEJAS: No, sir, Judge.

25 THE COURT: Ms. Fisher, is there anything else for

1 the United States?

2 MS. FISHER: No, Your Honor.

3 THE COURT: All right. The defendant's remanded.
4 Thank you.

5 MR. CEJAS: Thanks, Judge.

6 (Hearing adjourned at 12:58 p.m.)

7 CERTIFICATION

8
9 I certify that the foregoing is a correct transcript
10 from the record of proceedings in the above-entitled matter.
11

12
13 X_____ /s/ _____ x

14 Jody A. Stewart

15 X_____ 2-7-2017 _____ x

16 Date
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JODY A. STEWART, Official Court Reporter